UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 841

Cases No. 925: GUEST
No. 926: SLATFORD

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mikuin Leliel Balanda, Vice President; Mr. Julio Barboza;

Whereas at the request of Jean Guest and Christine Slatford, former staff members of the United Nations World Food Council (hereinafter referred to as WFC), the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of applications with the Tribunal until 31 May 1996;

Whereas, on 24 May 1996, the Applicants filed separate applications, each requesting the Tribunal, inter alia:

> "3. To rescind the final decision of the Secretary-General, as notified to the Applicant[s] in a letter from the Under-Secretary-General for Administration and Management dated 8 November 1995, ..., to order the Applicant[s]' reinstatement with all [their] entitlements from the date of the initial termination decision, i.e. 22 December 1993, or alternatively to order the Respondent to pay [each] Applicant a sum equivalent to five years' gross salary, as well as pension rights, for the material injury sustained;
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> 4. To award the Applicant[s] compensation in an amount to be set by the Tribunal for the moral injury sustained;
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> 5. To award the Applicant[s] costs, ..., in an amount to be determined at the conclusion of the proceedings."

Whereas the Respondent filed his answer on 20 January 1997 in respect of the Applicant Slatford and on 28 February 1997 in respect of the Applicant Guest;

Whereas the Applicants filed written observations on 24 June 1997;

Whereas the facts in the case are as follows:

The Applicant Slatford entered the service of the World Food Council (WFC) in Rome, Italy, on 29 September 1975, as a locally recruited Shorthand/Typist at the G-3 level. She was granted a permanent appointment effective 1 April 1979, and on 1 October 1979, she was promoted to the G-5 level. On 1 October 1987, she was promoted to the G-6 level. On 1 October 1991, her functional title was changed to Meetings Services Assistant, the position she held until 31 December 1993, when her appointment was terminated due to the abolition of her post.

The Applicant Guest was transferred from the Food and Agriculture Organization to the WFC Secretariat in Rome, on 15 January 1979, as an internationally recruited Stenographer at the G-3, step V level, under a permanent appointment. On 1 April 1984, she was promoted from the G-4 to the G-5 level. Her functional title was changed to Secretary. Effective 1 April 1989, she was promoted to the G-6 level, the position and level she held until 31 December 1993, when her permanent appointment was terminated due to the abolition of her post.

In 1992, the Secretary-General commenced a process of restructuring the Secretariat of the United Nations. In this context, on the occasion of Staff Day, 11 September 1992, the Secretary-General announced that "while there may well be considerable redeployment, staff at other levels [other than top

echelon posts] [were] in no danger of losing their employment with the United Nations as a result of the restructuring exercise".

The General Assembly, having considered the proposals on restructuring made by the Secretary-General in his Report A/C.5/47/88 of 4 March 1993, adopted on 6 May 1993, resolution 47/212(B), which, inter alia, transferred the WFC Secretariat to the Department for Policy Coordination and Sustainable Development (DPCSD) at the United Nations Headquarters in New York.

From April 1993 until the transfer of the WFC Secretariat on 31 December 1993, the Organization made efforts to relocate WFC staff affected by the transfer to DPCSD. As a result of those efforts, of the thirteen WFC General Service staff, two were relocated in Rome, four resigned and seven were separated due to abolition of post. Of those seven, five did not want to be relocated outside Rome and two - the Applicants - declined offers of alternate employment made to them.

On 29 December 1993, the Applicant Slatford was offered a position in DPCSD in New York. On 30 December 1993, she rejected that offer, primarily on the grounds that she had not been given sufficient time to consider it, as she had been asked to provide an answer by 30 December 1993. On 31 December 1993, the Applicant Slatford wrote to the WFC Executive Officer, definitively rejecting the offer on the basis that the conditions accompanying the offer were not satisfactory to her.

On 30 December 1993, the Applicant Guest was offered a position with the United Nations Compensation Commission in Geneva. On 31 December 1993, she rejected that offer, primarily on the grounds that she was not given sufficient time to consider it, as she had been asked to provide an answer by 31 December 1993. In addition, the Applicant Guest stated that the conditions offered were "entirely unacceptable".

Despite the Applicant Slatford's rejection of the offer of employment with DPCSD, on 3 January 1994, the WFC Executive Officer informed the Applicant Slatford that she had been granted a further "two to three" weeks to reconsider DPCSD's offer. She was informed that she would be placed on special leave with full pay during this period, notwithstanding the fact that the WFC Secretariat had already closed. However, on the following day, the WFC Executive Office informed the Director of Personnel, Office of Human Resources Management (OHRM), that the Applicant had definitively declined DPCSD's offer. She stated the reasons for her rejection in a letter dated 10 January 1994. Accordingly, by memorandum, retroactively dated 30 December 1993, the Applicant Slatford was informed that her appointment was terminated with effect from 31 December 1993.

On 4 January 1994, the WFC Executive Officer transmitted the Applicant Guest's letter of 31 December 1993 to the Director of Personnel, OHRM, New York. The WFC Executive Officer informed the Director of Personnel that, on 3 January 1994, the Applicant had been informed that the Organization "might be able to offer [the Applicant] a probationary appointment despite the nature of the funding for the Commission", instead of the originally offered fixed-term appointment. However, the WFC Executive Officer added that the Applicant had indicated that "she would accept nothing less than a permanent appointment at her current grade/step and non-local status". Accordingly, by memorandum, retroactively dated 22 December 1993, the Applicant Guest was informed that her appointment was terminated.

Subsequently, by letters dated 28 February 1994, both Applicants requested the Secretary-General to review the decisions to terminate their appointments, or alternatively, they requested permission to submit an appeal directly to the Tribunal.

On 14 April 1994, the Officer-in-Charge of the Staff Administration and Training Division informed the Applicants that the contested decision was maintained. On 29 April 1994, the Director of Personnel advised the Applicants that the Secretary-General had rejected their requests for direct submission of their appeals to the Tribunal.

On 30 May 1994, the Applicants lodged separate appeals with the Joint Appeals Board (JAB). The JAB adopted its reports on 24 August 1995. In each case, the JAB's considerations and conclusions read, in part, as follows:

> "Considerations
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> [As per both Applicants' reports:]
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> 45. ..., the Panel observed that the Secretary-General, on 11 September 1992, on the occasion of United Nations Staff Day, had stated that he could not 'emphasize too strongly that while there may well be considerable redeployment, staff at other levels, [i.e., those not holding top-echelon posts] [were] in no danger of losing their employment with the United Nations as a result of the restructuring exercise'. According to notes dated 22 April 1993, members of the United Nations Staff Union also had been advised by the Controller on 16 March 1993 'that posts [were] being re-distributed rather than suppressed' and that '[t]here [was] no provision for payment of any indemnities for any type of terminations'. The notes state that the Controller 'felt that it would be useful to highlight the fact that the Secretary-General continue[d] to give his assurance that no staff member [would] lose his or her job'. On 17 June 1993, the Secretary-General met with the Staff Committee in Vienna and, according to a newsletter dated 23 June 1993 of the United Nations Staff Union in Vienna, 'repeated a statement made on several previous occasions, namely that no staff member would lose his/her job as a result of the restructuring exercise'.
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> 46. The Panel considered the impact of the foregoing statements by the Secretary-General on the Organization's obligation to the Appellant[s] in connection with the termination of [their] permanent appointment[s] for abolition of post due to the restructuring exercise. As the Administrative Tribunal has stated, '... the Administration must behave responsibly in its administrative arrangements

and refrain from expressing hopes or intentions it has no expectation of fulfilling ...' Judgements Nos. 462 (Tortel) and 342 (Gomez). 'A staff member is normally entitled to expect the Organization to honour commitments on which the staff member has relied in good faith'. Judgement No. 482 (Tortel). The Panel found, therefore, that the Secretary-General's statements imposed on the Organization an obligation to redeploy staff members affected by the restructuring exercise.

47. The evidence indicates that the Administration recognized the broader obligation arising from the [Staff Rules and the] Secretary-General's statements, i.e., to make every effort to find the Appellant[s] (despite [the Applicant's Slatford's] status as a local recruit) a suitable post in any office within the Organization, irrespective of location. [As per the Applicant Slatford's report] [t]he Panel noted that, during the June-October 1993 period, the Appellant had been interviewed and considered for posts with DPCSD in Geneva but was found not to have the necessary experience for the administrative assistant posts in question. At the end of October 1993, the Appellant was under consideration by DPCSD in New York.[1] A Note on the status of WFC General Service staff members as of 9 December 1993 states that the Appellant had not been accepted by DPCSD and was being reviewed for other posts in New York.

[As per the Applicant Guest's report] [b]ased on the considerable correspondence reflecting the Administration's efforts to redeploy the WFC General Service staff in Rome, and taking into consideration the reduced funding and downsizing occurring in UNIC-Rome and the other UN offices in Rome, the Panel found that the Administration had made every effort to find the Appellant a suitable post in Rome.

...

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[1] In a 29 October 1993 memorandum to the Executive Officer of WFC, [the Applicant Slatford] acknowledged that she had been asked to consider relocating to DPCSD in New York to work with the Task Force preparing for the World Summit on Social Development to be held in 1995. With respect thereto, she stated that she 'would need assurance' on certain matters, including maintenance of her permanent contract after the 1995 Summit and assistance with travel and limited removal costs.

[As per both Applicants' reports:]

48. [However], it was not until the 29 [for the Applicant Slatford] [and] 30 [for the Applicant Guest] December 1993 that the Administration offered the Appellant[s] a post.

...

Recommendations

51. Based on the foregoing considerations and findings, the Panel recommends

(a) that the Organization pay the Appellant[s] the sum of $4,000.00 [each] for the unreasonable and untimely manner in which the 29 December 1993 offer was made;

(b) that the Organization pay the Appellant[s] the sum of $1,000.00 [each] for its failure to properly inform [them] of the developments in connection with the restructuring exercise; and

(c) that the Appellant[s]' other claims be rejected."

By letters dated 8 November 1995, the Under-Secretary-General for Administration and Management informed the Applicants that:

"The Secretary-General, in view of the unsatisfactory aspects of the case arising from lack of information, has decided to accept the Board's unanimous recommendation that [the Applicants] be paid $1,000 [each] in this respect. However, the Secretary-General cannot concur with the Board's view that the offer made to you on 29 [30] December 1993 was unreasonable and untimely, nor with its recommendation that an indemnity of $4,000 be paid to [the Applicants] on this account. The new post offered to [each Applicant] in December 1993 at DPCSD in New York [and in the case of the Applicant Guest, at UNOG] was the result of intense and prolonged efforts made by the WFC Secretariat which, however late in its coming, remained a sound and valid proposition in view of the few existing openings and of the very difficult financial situation confronting the UN and other international organizations at that time. While it was your privilege to find the terms and conditions of this job offer unsatisfactory and to reject them, it nevertheless fulfilled the Secretary-General's commitment to make every effort to

> find a suitable redeployment opportunity for every WFC General Service staff [member], which did not imply that the new post offered would necessarily carry entitlements identical to the former."

On 24 May 1996, the Applicants filed with the Tribunal the applications referred to earlier.

Whereas the Applicants' principal contentions are:

1. The Secretary-General did not honour his commitment not to terminate any appointments at the WFC. By terminating their appointments, he failed to act in good faith.

2. The Secretary-General did not fulfil his obligations of priority placement and of keeping the staff informed of developments on the reorganization.

Whereas the Respondent's principal contentions are:

1. The Applicants' permanent appointments were properly terminated pursuant to staff regulation 9.1(a). The Respondent has fulfilled his obligations to make good faith efforts to find an alternate post for each Applicant.

2. The Respondent acknowledges that the Applicants may not have been properly informed of the impact of the restructuring of the Secretariat. However, the Applicants have been reasonably compensated for that failure.

The Tribunal, having deliberated from 16 July to 1 August 1997, now pronounces the following judgement:

I. Both of the Applicants served at the G-6 level in the World Food Council (WFC) Secretariat in Rome, and their respective appointments were terminated for abolition of post on 31 December 1993. Although the Applicants filed separate applications, the

Tribunal orders the joinder of the two cases because the cause of action, the pleas and the facts, as well as the legal issues, are identical. The Tribunal considers that the documentation in the case is suffiently complete and, accordingly, decides that an oral hearing is not necessary for it to render a judgement in the case.

II. The Applicants' arguments ultimately rest on a promise made on 11 September 1992, by the Secretary-General, that those in lower echelon positions, such as the Applicants, were "in no danger of losing their employment with the UN as a result of the restructuring exercise." The same promise was reiterated to the UN Staff Union by the Controller on behalf of the Secretary-General on 16 March 1993, and by the Secretary-General himself on 17 June 1993, in a newsletter to the Staff Union in Vienna.

III. The Tribunal first examined this promise, in view of its importance to the case, to ascertain whether it created a legal obligation for the Respondent. The Tribunal notes that this promise was specific in nature, made in public and reiterated in different media. Moreover, the promise was made by an official who had the authority to fulfil it. The Tribunal recalls its holding that "the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions that it has no expectation of fulfilling." (Cf. Judgements No. 444, Tortel (1989) and 342, Gomez (1985)). In the light of the foregoing, the Tribunal decides that the promise created a legal obligation for the Secretary-General towards those staff members who were not in upper echelon positions and who were threatened by the abolition of their posts.

IV. Having established the existence of a legally binding promise, the Tribunal next considered the scope and content of the obligation created by the promise. The Tribunal concludes that the promise

compelled the Secretary-General to make, in good faith, his best efforts to place the staff members whose posts had been abolished in reasonably equivalent positions, subject to the availability of such posts and to the willingness of the staff member to be transferred to other duty stations. In this connection, the Tribunal notes that the Applicant Guest had agreed to transfer to Geneva and the Applicant Slatford did not oppose a transfer to a post outside Rome.

V. The Tribunal next considered whether, given the fact that a specific, legally binding promise existed, the Applicants had relied on that promise in such a way as to justify compensation. The Tribunal recalls its jurisprudence on this issue, that "[a] staff member is normally entitled to expect the Organization to honour commitments on which the staff member has relied in good faith." (Cf. Judgement No. 444, Tortel (1989)). The Tribunal notes that the Applicants acted in reliance upon the promise: in good faith, both Applicants let eight months elapse without seeking other employment, trusting that the Secretary-General's promise would be fulfilled and that they would be offered posts equivalent to the ones they held in the WFC. The Tribunal is of the view that, if a staff member has acted, in good faith, in reliance on a legally binding promise, that staff member is entitled to compensation, if such reliance is ultimately detrimental to his or her interests.

VI. The Tribunal notes that the Applicant Slatford was a locally recruited staff member, while the Applicant Guest was recruited internationally. Had the Secretary-General not made the promise described above, his obligation to the Applicant Slatford would have been governed by staff rule 109.1(c)(ii)(a), which would have obliged him to find her a suitable position in Rome. This was the decision of the Tribunal in its Judgement No. 161, Noel (1972). However, the effect of the Secretary-General's unqualified promise was to equalize the position of the Applicants. Indeed, the fact

that the Respondent contemplated posts outside of Rome for the Applicant Slatford suggests that he adopted the same interpretation of his promise.

VII. Having established the content of the obligation created by the Secretary-General's promise, and the Applicants' reliance thereon, the Tribunal went on to examine whether, by his conduct, the Respondent had discharged that obligation. Specifically, the Respondent was obliged to use his best efforts to find suitable positions for both Applicants in the Organization. The facts indicate that, of a total of 13 WFC General Service staff members, only two were re-employed in Rome. Four of the 13 resigned, and five did not wish to be relocated outside Rome. The Applicants declined offers of alternative employment. Thus, the Respondent succeeded in placing only two staff members in new posts. The resignation of four staff members, and the refusal of a further five to be relocated outside Rome, left the Respondent with only two staff members -- the Applicants -- whom he had to place. This was not a very heavy burden.

VIII. A review of the facts reveals some efforts by WFC to place the Applicants and a manifest lack of will on the part of other organizations within the UN system to absorb General Service staff members from WFC. The Applicant Guest's experience in Geneva, where she was interviewed on 28-29 October 1993, for posts with UNCTAD, reveals a rather disorganized effort by the WFC authorities with respect to her placement. The Joint Appeals Board (JAB) report states that "[i]n her concluding summary, the Appellant indicated that only certain interviews had been 'job interviews as such' but even then there [had] not [been] a very clear picture of particular requirements, duties or job availability." The Tribunal notes that the record does not show any attempt made by the WFC authorities to

bring the difficulties they experienced in placing the Applicants, and thus the possible breach of the promise made by the Secretary-General, to his attention or to the attention of those in his cabinet.

IX. The Tribunal notes that, on several occasions, WFC General Service staff members wrote to the WFC authorities, expressing their concern about the approach taken to the redeployment process. The Applicants were among eight WFC staff members who, on 20 May 1993, wrote to the Officer-in-Charge, presenting their concerns about their employment situation. They pointed to the lack of a "policy framework for translating the Secretary-General's 'no job loss' commitment into whatever practical steps might be necessary to uphold it". They stressed the need for more "concrete and authoritative information for staff." On 5 July 1993, the Applicants and six other WFC General Service staff members again wrote to the Officer-in-Charge regarding the need for "transparency on all administrative personnel developments and initiatives which might have implications for any of the WFC staff affected by restructuring." Finally, on 16 July 1993, the Applicants joined a group of WFC staff members in writing to the Acting Director of Personnel, OHRM at Headquarters, expressing concern at "events and information which together seem incompatible with the Secretary-General's promise". They requested that "Headquarters make a further, stronger appeal" to the agencies in Rome.

X. Finally, on 29 and 30 December 1993, the Applicants were offered posts. The Applicant Slatford was offered a post with DPCSC in New York, and the Applicant Guest with the United Nations Compensation Commission in Geneva. The conditions upon which these offers were made, however, were so disadvantageous compared to the Applicants' previous employment that both Applicants declined the

offers. In order to avail herself of the post in Geneva, the Applicant Guest would have been obliged to resign her status as a permanent staff member (thereby forfeiting her right to compensation for involuntary separation), lose seniority to the G-5 level, relinquish her international recruitment status and pay her own travel and removal expenses. Moreover, she was given less than a day in which to accept the offer. The Applicant Slatford's situation was similar. The offer made to her would have necessitated the resignation of her permanent appointment in favour of a one-year probationary appointment and the payment of her own travel and moving expenses to New York. The Tribunal considers that the terms of these offers, and the conditions upon which they were made, demonstrate a callous disregard on the part of the Respondent for his responsibilities towards the Applicants. Such conduct does not meet the minimum requirements of good faith that are essential to good administration.

XI. Having taken account of all the facts, the Tribunal considers that the Respondent did not make his best efforts to place the Applicants in posts that were reasonably equivalent to those they occupied in the WFC, which his promise obliged him to do. The Tribunal concludes that the Respondent must pay the Applicants compensation for the breach of promise to them.

The Tribunal assesses this compensation at one year of each of the Applicant's net base salary at the rate in effect on the date of their separation from service. Furthermore, the Tribunal agrees with the recommendation by the JAB that each Applicant be awarded the sum of $4,000 "for the unreasonable and untimely manner" in which the employment offers were made and the sum of $1,000 for the Respondent's "failure to properly inform [them] of the developments in connection with the restructuring exercise."

XII. For the foregoing reasons, the Tribunal:

(a) Orders the Respondent to pay each Applicant a sum equivalent to one year of her net base salary at the rate in effect at the date of her separation from service;

(b) Orders the Respondent to pay to each Applicant the sum of $4,000 pursuant to the recommendation of the JAB set forth in paragraph XI above;

The above sums are in addition to the $1,000 paid to the Applicants by the Respondent pursuant to his decision of 8 November 1995;

(c) Rejects all other pleas, including the Applicant's request for costs.

(Signatures)

Hubert THIERRY
President

Mikuin Leliel BALANDA
Vice-President

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary